

Nadler: Republican Efforts to Smear and Punish Planned Parenthood Amount to Unconstitutional Bill of Attainder

Friday, 18 February 2011

WASHINGTON, D.C. - Last night, Congressman Jerrold Nadler (D-NY), the top Democrat on the Judiciary Subcommittee on the Constitution, spoke on the House floor in opposition to Republican legislation - "the Pence Amendment" - to defund Planned Parenthood.

Nadler made the following statement:

"Madam Chairman, I am not going to repeat all of what has been said about the Republican war on women, about the fact that the Republican majority was elected pledging jobs and all we see is a war on various social services and women and nothing about jobs. But I am going to say this: I have been listening very carefully to the supporters of this amendment, to Mr. Pence and others, and what do I hear? I hear that we must punish Planned Parenthood by defunding them because they have committed a number of sins.

"Sin Number 1 - they perform abortions. They are a very large abortion provider, and even though none of those abortions are paid for with federal funds - that is prohibited under the Hyde amendment, however you read it - ‘we don't like Planned Parenthood because they are a large abortion provider.'

"Number two - ‘we don't like Planned Parenthood because they have committed allegedly various terrible things.' Some provocateurs went into their offices and said that they were representing sex workers and they were offered services, and any organization that is willing to do this should not get federal funds.

"We are going to punish Planned Parenthood, number one, because they are a large abortion provider and we don't like abortion providers; and, number two, because they do other things which, if in fact they do, which I don't think they do, but if in fact they do, they are bad things.

"There is a major problem with this. There is a major problem with this rhetoric and with this reasoning. And, by the way, the CR to which this is an amendment eliminates Title X family planning funding anyway, so it will eliminate most of the funds that go to Planned Parenthood. But whatever funds that are available, they can go to other people to provide those services, not Planned Parenthood, because ‘we don't like Planned Parenthood for various reasons.'

"A bill that punishes someone, some person or organization who is named or is identifiable, by legislative action is called a bill of attainder. That is the definition of a bill of attainder: A legislative punishment, penalty, a legislative penalty, a legislative-enacted penalty - in this case, no funding - directed at some identifiable person or organization to punish them for something.

"Article I, Section 9 says, ‘No bill of attainder or ex post facto law shall be passed' - a fundamental foundation of constitutional law.

"If Planned Parenthood or anybody else is doing terrible things and ought to be punished, that is up to the courts. If, indeed, Planned Parenthood is trafficking with sex traffickers, let them be prosecuted. If, indeed, Planned Parenthood is doing anything illegal, let them be prosecuted. Let the organization be prosecuted. Let the individual employees who are doing these things be prosecuted at law. That is our system. But you don't punish an organization because

they are doing something of which you don't approve.

"Now, if you want to say we don't think that there ought to be any contraceptive services in the United States and therefore we are going to have no Title X funding, the CR does say that. I don't agree with it, but it is constitutional. But, to say that if we have Title X funding, if we have maternal services funding, none of it can go to Planned Parenthood, it can go to somebody else, but not Planned Parenthood, that is a legislatively enacted punishment because Planned Parenthood is or is allegedly doing things of which you don't approve.

"Now, I heard a lot at the beginning of this Congress about how we have to make sure that we adhere to the Constitution. This is a bill of attainder, because it is a legislatively enacted punishment of a named organization because that organization is doing things, or is allegedly doing things, of which we don't approve.

"So I submit that, in addition to all the other reasons why this shouldn't be done that have been enacted here, this is flatly unconstitutional, and I challenge anyone to say how this is not a bill of attainder. Again, the black letter definition of a bill of attainder is a legislatively enacted penalty aimed at some person or organization that is identifiable, named right here, for some reason, that they have done various things, provided abortions, done illegal things or otherwise.

"So, in addition to all the other problems, this amendment is unconstitutional and will be struck down by the courts if it should pass."

###